

## Wage and Hour Division, Labor

## § 503.19

before the end date of employment specified in the *Application for Temporary Employment Certification*, as specified in § 503.16(y);

(11) The *H-2B Registration*, job order, and a copy of the *Application for Temporary Employment Certification* and the original signed Appendix B of the Application.

(12) The approved *H-2B Petition*, including all accompanying documents; and

(13) Any collective bargaining agreement(s), individual employment contract(s), or payroll records from the previous year necessary to substantiate any claim that certain incumbent workers are not included in corresponding employment, as specified in § 503.4.

(d) *Availability of documents for enforcement purposes.* An employer must make available to the Administrator, WHD within 72 hours following a request by the WHD the documents and records required under 20 CFR part 655, subpart A and this section so that the Administrator, WHD may copy, transcribe, or inspect them.

### § 503.18 Validity of temporary labor certification.

(a) *Validity period.* A temporary labor certification is valid only for the period of time between the beginning and ending dates of employment, as approved on the *Application for Temporary Employment Certification*. The certification expires on the last day of authorized employment.

(b) *Scope of validity.* A temporary labor certification is valid only for the number of H-2B positions, the area of intended employment, the job classification and specific services or labor to be performed, and the employer specified on the approved *Application for Temporary Employment Certification*. The temporary labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

### § 503.19 Violations.

(a) *Types of violations.* Pursuant to the statutory provisions governing enforcement of the H-2B program, 8

U.S.C. 1184(c)(14), a violation exists under this part where the Administrator, WHD determines that there has been a:

(1) Willful misrepresentation of a material fact on the *H-2B Registration*, *Application for Prevailing Wage Determination*, *Application for Temporary Employment Certification*, or *H-2B Petition*;

(2) Substantial failure to meet any of the terms and conditions of the *H-2B Registration*, *Application for Prevailing Wage Determination*, *Application for Temporary Employment Certification*, or *H-2B Petition*. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions of such documents; or

(3) Willful misrepresentation of a material fact to the Department of State during the H-2B nonimmigrant visa application process.

(b) *Determining whether a violation is willful.* A willful misrepresentation of a material fact or a willful failure to meet the required terms and conditions occurs when the employer, attorney, or agent knows its statement is false or that its conduct is in violation, or shows reckless disregard for the truthfulness of its representation or for whether its conduct satisfies the required conditions.

(c) *Determining whether a violation is significant.* In determining whether a violation is a significant deviation from the terms and conditions of the *H-2B Registration*, *Application for Prevailing Wage Determination*, *Application for Temporary Employment Certification*, or *H-2B Petition*, the factors that the Administrator, WHD may consider include, but are not limited to, the following:

(1) Previous history of violation(s) under the H-2B program;

(2) The number of H-2B workers, workers in corresponding employment, or U.S. workers who were and/or are affected by the violation(s);

(3) The gravity of the violation(s);

(4) The extent to which the violator achieved a financial gain due to the violation(s), or the potential financial loss or potential injury to the worker(s); and

(5) Whether U.S. workers have been harmed by the violation.